

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|--|---|------------------------------------|---------------------------------|
| Investigator: Laura Strauss | Team: Squad #6 | CCRB Case #: 201903004 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 04/06/2019 1:45 PM | Location of Incident: East 212th Street and Laconia Avenue | Precinct: 47 | 18 Mo. SOL 10/6/2020 | EO SOL 5/23/2021 | |
| Date/Time CV Reported Sat, 04/06/2019 8:25 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Sat, 04/06/2019 8:25 PM | | |

| Complainant/Victim | Type | Home Address |
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| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Ryan Duffany | 04399 | 960483 | 047 PCT |
| 2. POM Kyron Delarosa | 11960 | 960431 | 047 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A.POM Ryan Duffany | Abuse: Police Officer Ryan Duffany stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| B.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| C.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa threatened § 87(2)(b) with the use of force. | |
| D.POM Ryan Duffany | Abuse: Police Officer Ryan Duffany searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| E.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| F.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa questioned § 87(2)(b) | |
| G.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa questioned § 87(2)(b) | |
| H.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa questioned § 87(2)(b) | |
| I.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa questioned § 87(2)(b) | |
| J.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa frisked § 87(2)(b) | |
| K.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa searched § 87(2)(b) | |
| L.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa frisked § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| M.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa searched § 87(2)(b) | |
| N.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa frisked § 87(2)(b) | |
| O.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa searched § 87(2)(b) | |
| P.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa threatened to arrest § 87(2)(b) | |
| Q.POM Ryan Duffany | Abuse: Police Officer Ryan Duffany failed to provide § 87(2)(b) and § 87(2)(b) with business cards. | |
| R.POM Kyron Delarosa | Abuse: Police Officer Kyron De La Rosa failed to provide § 87(2)(b) and § 87(2)(b) with business cards. | |
| § 87(2)(g), § 87(4-b) | | |
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Case Summary

On April 6, 2019, § 87(2)(b) filed this complaint via the CCRB's Call Processing System as well as a duplicate of this complaint over the phone with the IAB (log #19-13655).

On April 6, 2019, at approximately 1:45 p.m., PO Ryan Duffany and PO Kyron De La Rosa, of the 47th Precinct, stopped § 87(2)(b)'s vehicle, in which § 87(2)(b) and § 87(2)(b) were occupants, at East 212th Street and Laconia Avenue in the Bronx (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). The officers approached the vehicle, and PO De La Rosa tapped on the front passenger window with his firearm (**Allegation C: Abuse of Authority**, § 87(2)(g)). PO Duffany searched § 87(2)(b)'s vehicle and removed three plastic bags containing liquor bottles (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO De La Rosa allegedly also searched § 87(2)(b)'s vehicle (**Allegation E: Abuse of Authority**, § 87(2)(g)). PO De La Rosa asked all civilians whether they had any drugs or weapons (**Allegation F: Abuse of Authority**, § 87(2)(g)). **Allegations G-I: Abuse of Authority**, § 87(2)(g). PO De La Rosa frisked and allegedly searched § 87(2)(b) and § 87(2)(b) (**Allegations J and L: Abuse of Authority**, § 87(2)(g)). **Allegations K and M: Abuse of Authority**, § 87(2)(g). When PO De La Rosa approached § 87(2)(b) he volunteered that he had a pocket knife and was then frisked and searched by PO De La Rosa (**Allegations N and O: Abuse of Authority**, § 87(2)(g)). PO De La Rosa seized § 87(2)(b)'s knife and told him that it was an arrestable offense (**Allegation P: Abuse of Authority**, § 87(2)(g)). PO Duffany and PO De La Rosa did not provide § 87(2)(b) and § 87(2)(b) with business cards (**Allegations Q and R: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) received a summons for § 87(2)(b).

No arrests resulted from this incident. PO Duffany's and PO De La Rosa's BWCs captured this incident (BR 02 and 03). § 87(2)(g).

Sequence of Events

The following sequence of events was determined by the investigation: § 87(2)(b)'s vehicle was stopped, the officers approached, and § 87(2)(b) was asked to roll his windows down. When § 87(2)(b) did not immediately comply, PO De La Rosa tapped on § 87(2)(b)'s window with his gun. The civilians exited § 87(2)(b)'s vehicle and stood next to PO De La Rosa, with their hands on the vehicle. PO Duffany began searching § 87(2)(b)'s vehicle. Simultaneously, PO De La Rosa asked everyone whether they had any drugs or weapons. PO De La Rosa frisked § 87(2)(b) and § 87(2)(b). PO De La Rosa then approached § 87(2)(b) who volunteered that he had a pocket knife. PO De La Rosa frisked and searched § 87(2)(b) and seized his knife. While this occurred, PO Duffany continued searching the vehicle. As PO De La Rosa and § 87(2)(b) discussed the knife, PO Duffany went over to his vehicle, which was a few feet away from § 87(2)(b) and PO De La Rosa. PO De La Rosa told § 87(2)(b) that the knife was an arrestable offense. PO Duffany then prepared a summons for § 87(2)(b).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Ryan Duffany stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer Kyron De La Rosa stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that § 87(2)(b) had dark tints that obstructed the view into his vehicle. In PO Duffany's BWC footage (BR 02), beginning at the 00:00 mark in the video player, these dark tints on § 87(2)(b)'s vehicle are visible.

§ 87(2)(b) testified (BR 06) that his vehicle had dark tints, on the four side windows and rear windshield. He denied that he committed any moving or parking infractions.

PO Duffany testified (BR 07) that while he and PO De La Rosa were at an unrelated vehicle stop, § 87(2)(b) drove recklessly past the officers, at 15 mph over the speed limit, almost hit them and did not slow down. PO Duffany and PO De La Rosa left the vehicle stop they were engaged in to stop § 87(2)(b)'s vehicle. As PO Duffany approached, he observed heavy tints on all of § 87(2)(b)'s windows and he could not see inside.

PO De La Rosa's testimony (BR 08) § 87(2)(g) specified that he saw § 87(2)(b) drive around the area at an unsafe speed twice prior to when § 87(2)(b) almost hit him and PO Duffany.

No person shall operate a motor vehicle covered by or treated with any material that has a light transmittance of less than seventy percent. NYS Vehicle and Traffic Law § 375 (12-a)(b) (BR 09). Police officers may legally stop a vehicle when they have probable cause to believe that a traffic violation has occurred, regardless of their primary motivation. People v. Robinson, 97 N.Y.2d 341 (2001) (BR 10).

§ 87(2)(g)
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§ 87(2)(g).

Allegation (C) Abuse of Authority: Police Officer Kyron De La Rosa threatened § 87(2)(b) with the use of force.

It is undisputed that when PO De La Rosa and PO Duffany approached § 87(2)(b)'s vehicle, his windows were not rolled down and PO De La Rosa used his gun to tap on § 87(2)(b)'s front passenger window. § 87(2)(g).

Neither PO De La Rosa's nor PO Duffany's BWC footage captured this portion of the incident.

§ 87(2)(b) testified that after he parked and turned off his vehicle's ignition, he opened the door and stepped one foot outside of his vehicle. He was not yet aware that he was being stopped. PO Duffany told § 87(2)(b) to get back inside of the vehicle. § 87(2)(b) complied. PO De

La Rosa then used his gun to tap twice on § 87(2)(b)'s front passenger window. The first time, the barrel of PO De La Rosa's gun made contact with the window, with his gun pointed upward in the direction of the front windshield. The second time, PO De La Rosa tapped with the handle of his firearm. PO Duffany told § 87(2)(b) to roll down his windows twice and § 87(2)(b) explained that he needed to turn his vehicle back on to roll down the windows, which he then did.

§ 87(2)(g)

No contact was established with § 87(2)(b) to obtain a sworn testimony.

As noted above, PO De La Rosa testified that all the windows were heavily tinted. PO Duffany ordered § 87(2)(b) to roll down his windows. When he did not immediately comply, PO De La Rosa and PO Duffany approached with their guns drawn for safety. PO De La Rosa tapped on the passenger window with his gun, an unknown number of times, to get § 87(2)(b)'s attention to roll down the windows. When § 87(2)(b) rolled down the windows, which he did within approximately 15 seconds, there was no more threat and PO De La Rosa holstered his gun.

PO Duffany testified that he and PO De La Rosa told § 87(2)(b) to roll down his windows 4-5 times as they approached his vehicle. PO Duffany could not see whether PO De La Rosa unholstered his gun because the officers were on opposite sides of the vehicle. PO Duffany did not unholster his gun, but he feared for his safety because § 87(2)(b) almost hit him with his vehicle and he did not roll down his windows.

Drawing a firearm prematurely or unnecessarily limits a uniformed member's options in controlling a situation and may result in an unwarranted or accidental discharge of the firearm. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide Procedure 221-01 (BR 13).

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Ryan Duffany searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

In PO Duffany's BWC footage (BR 02), at the 00:39 mark in the video player, PO Duffany opened the rear driver's side door of § 87(2)(b)'s vehicle. PO Duffany bent over and rustling sounds are heard. PO Duffany's hands were not visible. At the 00:51 mark, when the camera

faced forward again, two plastic bags are on the roof of the vehicle, each with one liquor bottle inside. § 87(2)(g) (BR 14) shows the officers' BWC videos side by side, with PO De La Rosa's footage on the right and PO Duffany's on the left. Only the audio from PO De La Rosa's video played. At the 00:52 mark § 87(2)(g) PO Duffany's right hand is inside of the vehicle (video on the left side) and at the 00:55 mark, § 87(2)(b) stated that he had a pocket knife.

§ 87(2)(b) testified that after all civilians exited the vehicle, PO Duffany looked into the window of § 87(2)(b)'s vehicle. There were three black plastic bags with four full sealed bottles of liquor in the rear of the vehicle, on the floor, near the left-hand passenger seat. PO Duffany asked § 87(2)(b) if he had been drinking and he replied no. PO Duffany opened § 87(2)(b)'s rear driver's side door, pulled out the three bags, and placed them on the roof of the vehicle. PO Duffany's left arm and part of his upper left torso or shoulder entered the vehicle. PO Duffany did not remove the bottles or take any action to look closer at the bottles and did not search the vehicle at any other point.

§ 87(2)(g) She specified that PO Duffany pulled out one plastic bag that contained two liquor bottles, placed it on the roof of the vehicle, and pulled the bag down halfway.

§ 87(2)(b) stated that both PO Duffany and PO De La Rosa searched § 87(2)(b)'s vehicle and opened the center console and glove compartment. PO De La Rosa found a plastic bag with liquor bottles in the backseat and placed it on top of the vehicle.

PO Duffany testified that when all civilians exited the vehicle, he observed alcohol bottles in the rear floor of the vehicle, behind the driver's seat. He saw two large alcohol bottles, only one of which was in a plastic bag. PO Duffany asked § 87(2)(b) if he had been drinking and he replied no. PO Duffany took out the liquor bottles and placed them on the roof of the vehicle to see whether the bottles were open, which they were not. PO Duffany wanted to make sure that § 87(2)(b) was not driving under the influence, as he had almost hit PO Duffany earlier. PO Duffany entered through the driver's door, opened the center console to look for § 87(2)(b)'s license. PO Duffany did not ask § 87(2)(b) where his license was, and § 87(2)(b) did not say that his license was in the center console. § 87(2)(b) told PO De La Rosa that he had a knife, which gave PO Duffany probable cause to search § 87(2)(b)'s immediate, lunge-able area in his vehicle. No consent was asked for or provided.

PO Duffany did not think that § 87(2)(b) committed any crime or violation, aside from speeding, reckless driving, criminal possession of a weapon, and attempted assault, for almost hitting PO Duffany at a high rate of speed, earlier in the incident. This action and not rolling down the windows caused PO Duffany to fear for his safety. Aside from observing the alcohol, there was nothing that led PO Duffany to believe contraband was inside of the vehicle. PO De La Rosa did not search the vehicle.

§ 87(2)(g). PO De La Rosa added that he did not believe that there was a weapon or contraband in the vehicle and therefore, there was

no reason to search the vehicle. He did not categorize PO Duffany's actions of removing the liquor bottles as a vehicle search. PO De La Rosa did not search § 87(2)(b)'s vehicle. Officers may search a vehicle when there is probable cause to believe that it contains contraband or evidence of a crime. People v. Galak, 81 N.Y.2d 463 (1993) (BR 16). An object may only be seized, absent a warrant, if an officer views the object from a lawful vantage point and its incriminating nature is immediately apparent. People v. Diaz, 81 N.Y.2d 106 (1993) (BR 17). Following a lawful vehicle stop, when facts revealed or information gathered during the course of the encounter indicate that a weapon located within the vehicle presents an actual and specific danger to the officer's safety, a further intrusion to recover the weapon may be justified. People v. Carvey, 89 N.Y.2d 707 (1997) (BR 18). When an officer has probable cause to suspect a violation of NYS Vehicle and Traffic Law § 1227, which prohibits drinking alcoholic beverages and the possession of open containers of alcohol in a motor vehicle, the vehicle may be searched for additional open containers. People v. Martin, 50 A.D.3d 1169 (2008) (BR 19 and 20). In Martin, the Court deemed the following factors sufficient for probable cause: an officer observed a cup of alcohol in plain view, an officer detected the odor of alcoholic beverages emanating from the vehicle, the driver's eyes were red and glassy, and the driver admitted to consuming alcohol earlier in the day.

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§ 87(2)(g)
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§ 87(2)(g)
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§ 87(2)(g)
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§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Kyron De La Rosa searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

While § 87(2)(b) asserted, in an unsworn statement, that PO De La Rosa and PO Duffany searched § 87(2)(b)'s vehicle, BWC footage did not capture PO De La Rosa searching the vehicle, nor was it alleged by § 87(2)(b) or § 87(2)(b) § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Kyron De La Rosa questioned

§ 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Kyron De La Rosa questioned § 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Kyron De La Rosa questioned § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Kyron De La Rosa questioned § 87(2)(b)

In PO De La Rosa's BWC footage (BR 03), § 87(2)(b) and § 87(2)(b) stood in a row on the passenger side of the vehicle, with their hands placed on § 87(2)(b)'s vehicle. § 87(2)(b) stood at the back of his vehicle by the trunk, with his hands placed on the trunk. At the 00:23 mark in the video player, PO Duffany took the liquor bottles out of the vehicle and asked § 87(2)(b) whether he had been drinking. He replied no. At the 00:41 mark, PO De La Rosa approached the civilians and asked whether anybody had any drugs or weapons. § 87(2)(b) who was the closest to the front of § 87(2)(b)'s vehicle, replied no. PO De La Rosa walked past § 87(2)(b) and stood next to § 87(2)(b). PO De La Rosa asked § 87(2)(b) whether he had any drugs or weapons and he replied that he did not. PO De La Rosa then approached § 87(2)(b) who volunteered that he had a pocket knife.

§ 87(2)(b) testified that PO De La Rosa asked if anyone had any drugs or weapons. § 87(2)(b) testified that PO De La Rosa asked everyone whether they had any weapons. § 87(2)(b) stated that PO De La Rosa asked if anyone had any illegal substances or anything in the vehicle.

PO De La Rosa testified that he asked everyone whether they had any drugs or weapons, to ensure the officers' safety. There was not a specific reason why PO De La Rosa thought that they may have had weapons. PO De La Rosa did not believe that any of the civilians committed any crime or violation, aside from § 87(2)(b)'s tinted windows, reckless driving, and speeding. PO De La Rosa observed PO Duffany remove two liquor bottles and place them on top of the roof of § 87(2)(b)'s vehicle. PO De La Rosa did not see the bottles before PO Duffany

removed them. PO De La Rosa did not believe that there was a weapon or contraband in the vehicle.

PO Duffany testified that he took the liquor bottles out of § 87(2)(b)'s vehicle to see whether they were open and ensure that § 87(2)(b) was not driving under the influence.

A framework with four levels of police-citizen encounters was established in People v. De Bour, 40 N.Y.2d 210 (1976), in which the second level, the common-law right to inquire, necessitates founded suspicion that criminal activity is afoot. This founded suspicion may be based upon the knowledge possessed at that moment and any reasonable inferences (BR 21). Officers may not, without founded suspicion for the inquiry, ask occupants of a lawfully stopped vehicle if they possess any weapons. The framework established by De Bour applies with equal force to traffic stops. People v. Garcia, 20 N.Y.3d 317 (2012) (BR 22).

§ 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Kyron De La Rosa frisked § 87(2)(b)

Allegation (L) Abuse of Authority: Police Officer Kyron De La Rosa frisked § 87(2)(b)

Neither PO De La Rosa nor PO Duffany's BWC footage captured any physical contact PO De La Rosa made with § 87(2)(b) or § 87(2)(b)

§ 87(2)(b) testified that PO De La Rosa frisked § 87(2)(b) and § 87(2)(b). PO De La Rosa frisked § 87(2)(b)'s two front pockets. § 87(2)(b) did not see where § 87(2)(b) or § 87(2)(b) were frisked but saw hand motions consistent with a frisk.

§ 87(2)(b) testified that PO De La Rosa frisked § 87(2)(b) (see Allegation N) and then proceeded to frisk § 87(2)(b)'s and § 87(2)(b)'s front and back pockets. PO De La Rosa did not enter their pockets. Neither officer made any physical contact with § 87(2)(b)

§ 87(2)(b) stated that PO De La Rosa frisked him and the other three civilians. PO De La Rosa frisked § 87(2)(b)'s upper body, torso, legs, between his legs, and his feet. PO De La Rosa went into § 87(2)(b)'s back pocket, took out his wallet, and placed it on top of the vehicle. § 87(2)(b) was not sure whether PO De La Rosa entered anybody else's pockets.

PO De La Rosa testified that he frisked everyone, except § 87(2)(b) because he wanted to ensure, for the officers' safety, that nobody had weapons. PO De La Rosa frisked § 87(2)(b)'s and § 87(2)(b)'s pockets and waistbands. As noted above, his safety concern was solely due to § 87(2)(b)'s driving. PO De La Rosa did not believe that § 87(2)(b) or § 87(2)(b) committed any crime or violation. Aside from § 87(2)(b) having tinted windows,

driving recklessly, and speeding, PO De La Rosa did not believe that § 87(2)(b) committed any other crime or violation.

PO Duffany testified that he did not see PO De La Rosa frisk any of the civilians.

A civilian lawfully stopped by officers may be frisked, absent an arrest, if the officer has reason to believe that the individual is “armed and presently dangerous.” This reasonable suspicion must be based upon “specific reasonable inferences,” which may be drawn from facts in light of an officer’s experience. Incomplete or unparticularized hunches will not suffice. Terry v. Ohio, 392 U.S. 1 (1968) (BR 24). The first Terry requirement, a lawful investigatory stop, is met when officers lawfully detain an automobile and its occupants due to a vehicular violation. Thus, the requisite justification to frisk the driver or a passenger during a traffic stop is the same – officers must have reasonable suspicion that the individual is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009) (BR 25). A protective frisk is intended solely to discover the presence of a weapon and should not be extended beyond its purpose of securing an officer’s safety. Once the basis for the officer’s fear for his safety has abated, the search must stop. People v. Robinson, 125 A.D.2d 259 (1986) (BR 26).

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Allegation (K) Abuse of Authority: Police Officer Kyron De La Rosa searched § 87(2)(b)

Allegation (M) Abuse of Authority: Police Officer Kyron De La Rosa searched § 87(2)(b)

§ 87(2)(g)
As noted above,
BWC did not capture physical contact between PO De La Rosa and § 87(2)(b) or § 87(2)(b)

§ 87(2)(b) testified that PO De La Rosa entered § 87(2)(b) and § 87(2)(b) s pockets. § 87(2)(b) who did not provide a sworn testimony, stated that PO De La Rosa searched his back pocket, removed his wallet, and placed it on top of the vehicle. He could not account for whether PO De La Rosa searched any other civilian on scene.

PO De La Rosa testified that he did not enter § 87(2)(b) or § 87(2)(b) s pockets. PO Duffany testified that he did not see PO De La Rosa search any of the civilians.

§ 87(2)(g)
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Allegation (N) Abuse of Authority: Police Officer Kyron De La Rosa frisked § 87(2)(b)

Allegation (O) Abuse of Authority: Police Officer Kyron De La Rosa searched § 87(2)(b)

At the 00:54 mark in his BWC footage, PO De La Rosa approached § 87(2)(b) who stated, “I do, pocket knife, left side.” Rustling sounds are heard and PO De La Rosa asked why § 87(2)(b) had a knife, but there was no visible physical contact until the 1:14 mark, when PO De La Rosa’s hand was in § 87(2)(b)’s right-hand jacket pocket. § 87(2)(b) and PO De La Rosa discussed the knife, which was visible in PO De La Rosa’s hand at the 1:34 mark.

§ 87(2)(b) testified that he told PO De La Rosa that he had a pocket knife in his left rear pants pocket and that PO De La Rosa only entered that pocket and took out the knife. No physical contact was made prior to PO De La Rosa entering his left rear pocket to retrieve the knife. § 87(2)(b)’s wallet was in his back right pocket and PO De La Rosa had the wallet at some point. § 87(2)(b) was unsure how the wallet ended up in PO De La Rosa’s possession.

§ 87(2)(b) testified that § 87(2)(b) told PO De La Rosa where his wallet was, and PO De La Rosa took § 87(2)(b)’s wallet out of one of his right-hand pockets. § 87(2)(b) told PO De La Rosa that he had a pocket knife and PO De La Rosa took the knife out of one of § 87(2)(b)’s rear pockets. § 87(2)(b)’s view of § 87(2)(b) was partially blocked.

§ 87(2)(b) stated that PO De La Rosa found out that § 87(2)(b) had a knife, but he could not provide any additional details.

PO De La Rosa testified that after he frisked all the male occupants of the vehicle, he approached § 87(2)(b) who volunteered he had a pocket knife. § 87(2)(b) specified in which pants pocket the knife was located, though PO De La Rosa did not recall the location during the interview. PO De La Rosa frisked all of § 87(2)(b)’s pockets and around his waistband. When PO De La Rosa felt the knife, he reached into § 87(2)(b)’s pants pocket and took it out. § 87(2)(b)’s driver’s license was in the same pocket as the knife, and he took out the license with the knife. PO De La Rosa did not enter any of § 87(2)(b)’s other pockets.

A protective frisk is intended solely to discover the presence of a weapon and should not be extended beyond its purpose of securing an officer’s safety. Once the basis for the officer’s fear for his safety has abated, the search must stop. People v. Robinson, 125 A.D.2d 259 (1986) (BR 26). While conducting a lawful traffic stop, when an officer observes a knife or is informed by a vehicle occupant that he or she has a knife, the officer is justified in seizing the knife for their mutual safety, even absent reasonable suspicion that it is an illegal knife. People v. Alkabeeli, 48 Misc. 3d 681 (2015) (BR 27).

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Allegation (P) Abuse of Authority: Police Officer Kyron De La Rosa threatened to arrest

§ 87(2)(b)

At the 02:26 mark of PO De La Rosa's BWC footage (BR 03), PO De La Rosa told § 87(2)(b) that the knife is an "arrestable offense." PO De La Rosa additionally stated that § 87(2)(b)'s knife was spring assisted and that the blade was over four inches long.

§ 87(2)(b) received a summons for possession of a knife (BR 01), in violation of NYC Administrative Code § 10-133(c), and the knife was ultimately vouchered (BR 28). According to NYC Administrative Code § 10-133(c) (BR 29), it is unlawful for a person to carry or possess a knife with a blade of four inches or more in public.

§ 87(2)(g)

Allegation (Q) Abuse of Authority: Police Officer Ryan Duffany failed to provide

§ 87(2)(b) and § 87(2)(b) with business cards.

Allegation (R) Abuse of Authority: Police Officer Kyron De La Rosa failed to provide

§ 87(2)(b) and § 87(2)(b) with business cards.

PO De La Rosa and PO Duffany testified that they did not provide nor were they required to provide business cards during this incident. PO De La Rosa added that as § 87(2)(b) received a summons, no business cards were required for the civilians. PO Duffany stated that he did not have to provide a business card because they were stopped for a traffic violation. If anyone would have gotten a business card, it would have been § 87(2)(b) but he was issued a summons.

An officer shall offer a business card at the conclusion of certain law enforcement activities, including level two questions, frisks, and searches of persons or property, to the subject of that law enforcement activity, when such activity does not result in an arrest or summons. NYC Administrative Code § 14-174(b)(3) (BR 30).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 34).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 35).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 36).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 37).
- PO Duffany has been a member of service for three years and has been a subject in five CCRB cases and ten allegations, none of which were substantiated. Two cases are pending investigation. § 87(2)(g)
- PO De La Rosa has been a member of service for three years and has been a subject in ten CCRB cases and 27 allegations, none of which were substantiated. Three cases are pending investigation. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
 - As of October 7, 2019, the NYC Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 38).
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [REDACTED]

Squad No.: _____

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| Investigator: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |

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|---------------|-----------|--------------------|-------|
| Squad Leader: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |

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| Reviewer: | _____ | _____ | _____ |
| | Signature | | |